

Reporting Requirements for TRS Employers and Retirees

Termination of Employment, Retirement, & Working in Retirement

Employers and members/retirees of the Montana Teachers' Retirement System (TRS) are required by state statute (Title 19, chapter 20, MCA) to fully and accurately report the circumstances of termination of employment, retirement, and working in retirement. This document explains the requirements and the mandatory steps for terminating employment, retiring, and returning to work in a TRS-reportable position as a working retiree.

Failure to comply with these requirements may result in improper payments to and from TRS. By law, TRS is required to recover overpaid benefits and unpaid contributions, plus interest. TRS may offset a retiree's future benefits to recover overpaid benefits and unpaid employee contributions, plus interest. Employers may also be held liable for such payments, plus interest.

When a TRS retiree provides services on behalf of a TRS employer, that employment and the compensation paid must be reported to TRS. There are very few circumstances where such employment is not reportable to TRS. All TRS working retirees must be reported to TRS to ensure proper determination of their employment status and earnings limitations.

TRS members and employers must follow the step-by-step process described in this document to terminate employment, retire, and, if appropriate, to work in retirement.

1. Eligibility for Retirement Benefits

A TRS member is eligible to receive retirement benefits only when the member has met all applicable age and years-of-service requirements and the member has terminated employment in all TRS-reportable positions. To receive retirement benefits, you must first terminate employment.

TRS members are eligible for normal retirement with unreduced benefits at age 60 with 5 or more years of creditable service or with 25 years of creditable service at any age.

A TRS member is not eligible for retirement benefits until the month following the date of termination of employment. The first benefit will be payable the last day of the month in which the benefit began, and future benefits will be payable the last day of each succeeding month. For example, a member who applies for retirement benefits based on a termination date of June 5th would be eligible for retirement benefits as of July 1st, and his or her first benefit would be payable on the last day of July.

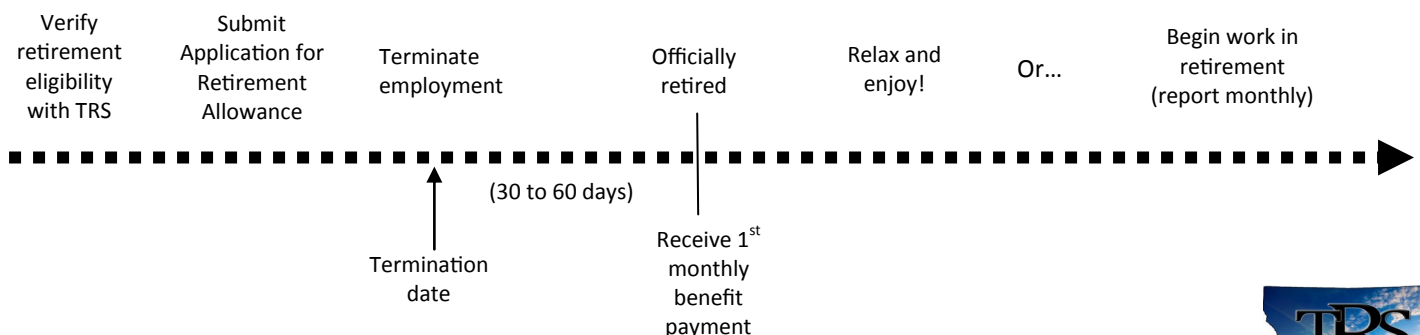
Any questions regarding the reportability of a working TRS retiree must be promptly submitted to TRS for resolution.

2. Termination of Employment

To officially retire, a member must first terminate employment in all TRS-reportable positions.

Employment is terminated when the employment relationship is severed—the member has no expectation or obligation to provide any further services to or on behalf of the employer and the employer has no expectation or obligation to compensate the member for any such

Retirement Process Timeline



services. The employment relationship is not severed simply if there is no contract for employment, or if the TRS member provides services under a different title or job/position description, as an independent contractor, as a volunteer, as a leased employee, as the employee of a third-party, or under any other designation or in any other capacity.

When applying for retirement benefits, the member and the employer(s) are required to submit the following completed forms to TRS:

1. The member must complete, sign, and submit to TRS an ***Application for Retirement Allowance Form 108***, certifying the date on which the member did or will terminate employment in all positions reportable to TRS.
2. The member and employer(s) must complete, sign, and submit to TRS a ***Pre-Arranged Re-Employment Certification Form 144***, disclosing whether the member has a prearranged agreement to return to work in any capacity after retirement.
3. The employer(s) must certify the termination date on ***Retirement Termination Pay Form 113***.

The documents identifying the employment termination date are typically completed, signed, and submitted to TRS as much as three or four months before the identified termination date. However, regardless of when the Application for Retirement Allowance, Pre-Arranged Re-Employment Certification, and/or Retirement Termination Pay forms are signed and submitted to TRS, termination of employment is a legal requirement for eligibility for retirement benefits. If circumstances change between the time those documents are submitted to TRS and the time at which the member is eligible to work in retirement pursuant to 19-20-731, MCA, the member may not be eligible to receive retirement benefits. Therefore, it is imperative that the member and employer immediately notify TRS of any changes affecting a prior certification of termination of employment in order to prevent payment by TRS of retirement benefits to which the member is not legally entitled.

TRS retirees **should not** provide any service on

behalf of a pre-retirement employer after the reported termination date but before the TRS member is eligible to be employed as a working retiree pursuant to 19-20-731, MCA. Any such service will be deemed to be a continuation of the employment relationship requiring continued participation as an active member of TRS.

3. Official Retirement

A TRS member is not officially retired until he or she has terminated employment **and** has received at least one monthly retirement benefit payment from TRS.

TRS retirement benefits are not intended as “supplemental income” for members who are actively employed. Rather, their purpose is to provide retirement income security to members who are ending their careers in Montana public education and actually retiring. Paying retirement benefits to active workers would unduly drain assets from the pension fund. For this reason, Montana statute (19-20-701, MCA) and the Internal Revenue Service code (Treasury Regulation 1.401-1(a)(2)(1)) prohibit the payment of retirement benefits to a member who is still providing services in a TRS-reportable position. Simply meeting eligibility criteria of age or years of creditable service does not entitle a member to retirement benefits—the member must also terminate employment (see Section 2 above).

A member who has applied for a retirement allowance but provides any service, in any capacity (paid or unpaid), on behalf of any TRS employer prior to receiving a monthly benefit payment, would be in active service reportable to TRS and would **not** qualify as a bona fide retiree.

4. Working in Retirement

By law (19-20-731, MCA), a TRS retiree may provide services on behalf of a TRS employer only after meeting the definition of “retired member.” To be a retired member, the person must (1) terminate all employment that qualifies the person for TRS membership, and (2) have received at least one monthly retirement benefit from TRS.



TRS members are not eligible for retirement benefits until the first day of the month following the termination date, and benefits are not payable until the last day of the month. So, in compliance with 19-20-731, MCA, the earliest a retiree could return to work for a TRS employer would be approximately 30 days after termination. For most retirees, the period between termination of employment and actual receipt of a monthly benefit payment will be between 30 and 60 days. (See Section 1 above).

5. Pre-arranged agreements with a TRS employer to work after retirement

A pre-arranged agreement for post-retirement employment is a written or unwritten agreement between a TRS member and a TRS employer calling for the provision of services after the member retires. A pre-arranged agreement includes any agreement to provide services as an employee, an independent contractor, a volunteer, a leased employee, an employee of a third-party, or under any other designation or in any other capacity, and regardless of the timeframe in which the services are to be performed.

A member who has attained normal retirement age (age 55 with at least 25 years of service, or age 60 with at least 5 years of service) may have a pre-arranged agreement to work in retirement as long as services are to be rendered after the member has received at least one monthly retirement benefit. Volunteering work time before the retiree is eligible to return to work pursuant to 19-20-731, MCA, makes the TRS member ineligible for retirement benefits.

Under IRS regulations, members who have not attained normal retirement age and who enter into a written or unwritten pre-arranged agreement for post-retirement service in any capacity with a pre-retirement employer will be ineligible for retirement benefits. TRS must treat the member as having continued active employment in a capacity requiring membership with TRS.

TRS must protect the qualified status of the pension plan and the benefits earned by all members. Accordingly, if a member retires before age 55

claiming there is no pre-arranged agreement, and then returns to work for the same employer, TRS will contact the employer to ascertain if there was, in fact, a pre-arranged agreement. Also, the IRS has recently indicated that TRS' current rules may not comply with changes to the IRS' Normal Retirement rules. To comply, TRS is exploring changes that could require a member be at least age 60 before returning to work with the same employer., and/or have at least a 180-day break in service, regardless of age, before returning to work for any TRS-reportable employer.

Additional information on pre-arranged agreements is provided on the Pre-Arranged Re-Employment Certification Form 144 available at www.trs.mt.gov.

6. Reporting Requirements for Working Retirees and Employers

Both the retired member and the employer for which the retiree will provide services must provide written notice to TRS of the post-retirement employment within 30 days of signing a contract, or, if no written contract is entered into, within 30 days of the first day on which postretirement services are provided. Both the working retiree and employer(s) must complete the Retired Member's and Employer's Notice of Post-Retirement Employment Form 146. Together with all related contracts, job descriptions, and other specified documentation, Form 146 must be submitted to TRS within 30 days of employing a TRS retiree. This required notice must be completed annually or at any time a contract (letter of agreement, etc.) is executed or modified.

In addition to the submission of Form 146, the employer is required to report the time worked by and compensation paid to the working retiree on the employer's monthly wage and contribution report to TRS.

Statute requires that working retirees be reported every month regardless of the number of days or hours worked or the amount of compensation paid to the working retiree. Contributions on the compensation of a working retiree do not have to be



remitted until the working retiree exceeds his or her earnings limitations (or until TRS notifies the employer that the member is being returned to active member status for other reasons). Nevertheless, the employer must still report all time worked and compensation paid to the working retiree.

7. Working Retiree Positions and Services that Must be Reported to TRS

Under 19-20-731, MCA, working retirees must be reported to TRS if the performance of the duties and functions of the position would make the employee eligible (under 19-20-302, MCA) to participate in TRS. It is the nature of the services, duties, and functions to be performed by the working retiree, not the job title assigned, that will determine reportability to TRS.

Additionally, a working retiree must be reported to TRS whether the TRS retiree is an employee of the employer, an employee of a third party, or an independent contractor. Finally, under 19-20-731, MCA, for a TRS retiree working in a position reportable to TRS and concurrently working in a position that is not reportable to TRS (for example a PERS covered position), **all compensation paid to the TRS retiree in both positions** is reportable to TRS and will be counted against the retiree's earnings limitation.

Know the Law

The duties and responsibilities of TRS employers, members, and retirees are set forth in Title 19, chapter 20, of the Montana Code Annotated (MCA). As an employer, school administrator, superintendent, school board member, worker in a TRS-reportable position, or retiree, you are responsible for understanding and complying with these laws.

You can access 19-20, MCA, online at http://data.opi.mt.gov/bills/mca_toc.htm. The following cites are for informational purposes only and are not intended to be comprehensive or to replace careful study of 19-20, MCA, and other relevant statutes in their entirety.

19-20-101: Definitions, including earned compensation, employer, normal retirement age, retired and retiree, and termination.

19-20-102: TRS Policy, including providing equitable retirement benefits, limiting salary spiking, and limiting compensation for working retirees.

19-20-105: Penalty for fraud.

19-20-204: Creditable service defined.

19-20-208: Duties and liability of employer.

19-20-212: IRS qualification rules.

19-20-302: Active membership defined.

19-20-304: Membership termination.

19-20-401: Creditable Service determinations.

19-20-701: Granting benefits, including certifying a bona fide separation from service and whether there are any intentions of re-employment.

19-20-703: Payments to be monthly.

19-20-731: Post-retirement employment limitations, including earning limitations and definition of TRS-reportable employment of retiree.

19-20-732: Re-employment of certain retirees.

19-20-733: Suspension of benefits upon resumption of employment.

19-20-801: Eligibility for service retirement.

19-20-802: Early retirement.

Additional information is available in TRS' handbooks for employers, active members, and retirees. These are available online at www.trs.mt.gov or in hardcopy from TRS.



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